

ESTTA Tracking number: **ESTTA631706**

Filing date: **10/08/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Abercrombie & Fitch Trading Co.
Granted to Date of previous extension	10/08/2014
Address	6301 Fitch Path New Albany, OH 43054 UNITED STATES

Correspondence information	Abercrombie & Fitch Trading Co. 6301 Fitch Path New Albany, OH 43054 UNITED STATES ipdocketingwest@abercrombie.com Phone:6142836930
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Applicant Information

Application No	86152857	Publication date	06/10/2014
Opposition Filing Date	10/08/2014	Opposition Period Ends	10/08/2014
Applicant	Schnittger, Isabella Elisabeth 101 Saybrook Road Simpsonville, SC 29681 UNITED STATES		

Goods/Services Affected by Opposition

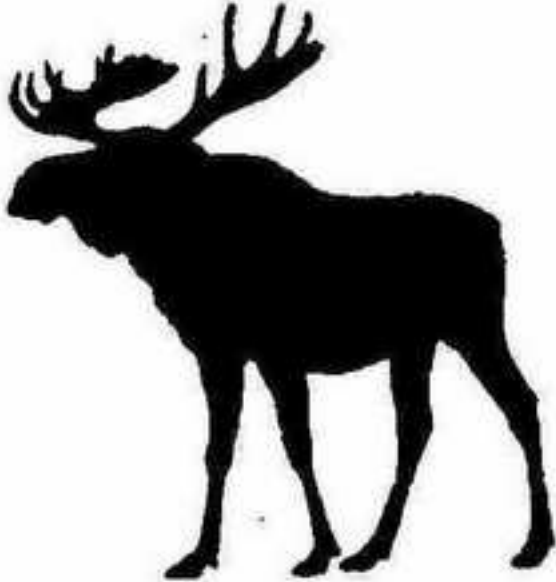
Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Caps; Hats; Hooded sweatshirts; Jackets; Long-sleeved shirts; Socks; Sweatshirts; T-shirts; Underwear
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3065016	Application Date	09/12/2003
Registration Date	03/07/2006	Foreign Priority Date	NONE
Word Mark	NONE		


Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2002/02/00 First Use In Commerce: 2002/02/00 clothing, namely, shirts and sweaters

U.S. Registration No.	4551991	Application Date	10/31/2005
Registration Date	06/17/2014	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 025. First use: First Use: 2002/02/00 First Use In Commerce: 2002/02/00 Clothing, namely, beach cover-ups, bras, camisoles, halter tops and night shirts

U.S. Registration No.	3964371	Application Date	10/31/2005
Registration Date	05/24/2011	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark	
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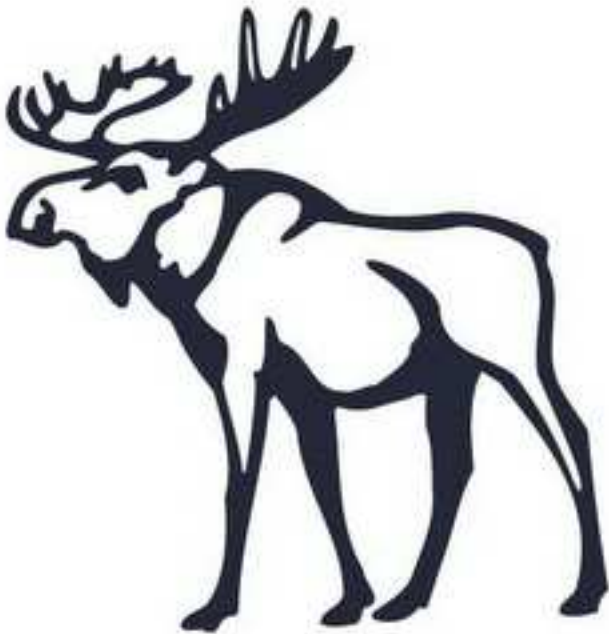
Description of Mark	NONE
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Goods/Services	<p>Class 025. First use: First Use: 2003/12/31 First Use In Commerce: 2003/12/31 Clothing, namely, polo shirts, blouses, sweaters, t-shirts, knit shirts, knit tops, sweatshirts, sweatpants, sweat suits, pants, jogging suits, jeans, shorts, skirts, caps, hats, scarves, jackets, coats, sandals, flip flops, socks, belts, tank tops, underwear, boxer shorts, swimsuits, pajamas, sleepwear and thongs</p> <p>Class 035. First use: First Use: 2003/12/31 First Use In Commerce: 2003/12/31 Retail store services, mail order catalog services and on-line retail store services featuring clothing, footwear, accessories, fragrances and jewelry</p>
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U.S. Registration No.	4168384	Application Date	10/31/2005
Registration Date	07/03/2012	Foreign Priority Date	NONE

Word Mark	NONE
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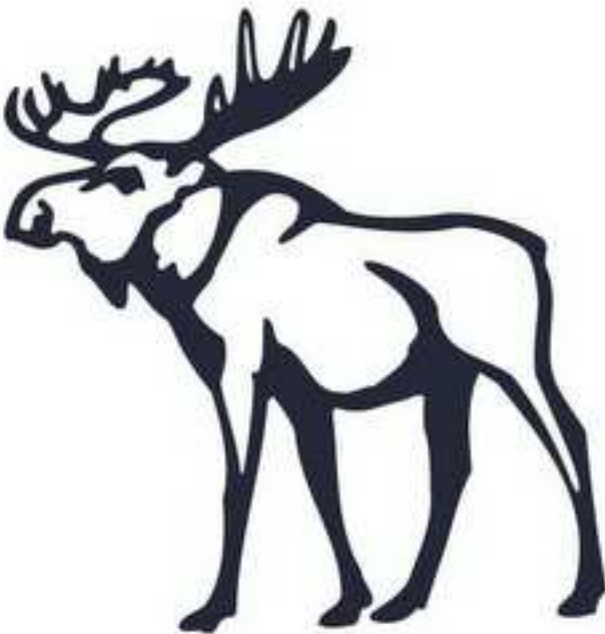
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2002/11/00 First Use In Commerce: 2002/11/00 Clothing, namely, beachwear, belts, blazers, dresses, footwear, gloves, knee highs, loungewear, mittens, tights and vests

U.S. Registration No.	3212644	Application Date	11/03/2005
Registration Date	02/27/2007	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2004/11/01 First Use In Commerce: 2004/11/01 Clothing, namely, polo shirts, sweaters, t-shirts, shirts, knit tops, woven tops, sweatshirts, sweatpants, [sweat suits,] pants, [jogging suits, pants,] shorts, caps, hats, scarves, jackets, coats, sandals, flip flops, [socks,] belts, tank tops, underwear, boxer shorts, swim suits, pajamas, sleepwear Class 035. First use: First Use: 2004/11/01 First Use In Commerce: 2004/11/01 [Retail store services, [mail order catalog services] and on-line retail store services featuring clothing, footwear, fashion accessories, fragrances and jewelry]

U.S. Registration No.	3574198	Application Date	11/03/2005
Registration Date	02/10/2009	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 014. First use: First Use: 2007/04/00 First Use In Commerce: 2007/04/00 Jewelry, namely, necklaces and bracelets Class 025. First use: First Use: 2004/11/00 First Use In Commerce: 2004/11/00 Clothing, namely, footwear
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Attachments	78299926#TMSN.png(bytes) 78743432#TMSN.png(bytes) 78743723#TMSN.png(bytes) 78981467#TMSN.png(bytes) 78746305#TMSN.png(bytes) 78980828#TMSN.png(bytes) Notice of Opposition_Final.pdf(226777 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jacob Kramer/
Name	Abercrombie & Fitch Trading Co.
Date	10/08/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

)	
Abercrombie & Fitch Trading Co.,)	
)	Opposition No. _____
Opposer,)	
)	Application No. 86/152,857
v.)	
)	Date of Filing: December 26, 2013
Isabella Elisabeth Schnittger,)	
)	Subject Mark: RED DEAR (& Design)
Applicant.)	

NOTICE OF OPPOSITION

Opposer, Abercrombie & Fitch Trading Co., an Ohio corporation with its principal place of business at 6301 Fitch Path, New Albany, Ohio 43054, believes that it is or will be damaged by registration of Application No. 86/152,857, owned by Isabella Elisabeth Schnittger, an individual with an address of 101 Saybrook Rd., Simpsonville, South Carolina 29681.

The opposed application, Application No. 86/152,857, was filed for registration on the Principal Register on December 26, 2013 for clothing in International Class 25.

The opposed application was published for opposition on June 10, 2014. An extension of time to oppose this application was timely sought by Opposer and duly granted.

As grounds for the Opposition, it is alleged that:

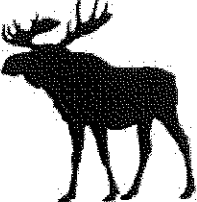




1. The parent company of Opposer, Abercrombie & Fitch Co., is one of the largest manufacturers, wholesalers and retailers of high quality, casual apparel and accessories for men, women, and children with an active, youthful lifestyle in the U.S.A. The parent company and its predecessors in interest have been engaged in the business of manufacturing and selling high-end apparel and related accessories in the United States for more than 10 years under its Moose Design


logo in connection with its “Abercrombie” brand, which it has registered in various forms

(collectively, the “Moose Design Marks”):

2. Opposer, Abercrombie & Fitch Trading Co., is a wholly owned subsidiary and holding company of Abercrombie & Fitch Co., the parent company, a Delaware corporation.

3. Opposer is the owner of numerous US Registrations for the following Moose Design Marks, including the following registrations in International Classes 25 and 35:

MARK	REG. NO.	REG. DATE	CLASS	FIRST USE DATE
	3,065,016	03/07/2006	25	02/01/2002
	4,551,991	06/17/2014	25	02/01/2002
	3,964,371	05/24/2011	25, 35	12/31/2003
	4,168,384	07/03/2012	25	11/01/2002
	3,212,644	02/27/2007	25	11/01/2004

	3,574,198	02/10/2009	25	11/1/2004
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4. All of Opposer's Registrations identified in the chart above are *prima facie* evidence of the validity thereof and Opposer's ownership and exclusive right to use these marks in commerce, and are constructive notice of Opposer's ownership thereof, all as provided by §§ 7(b) and 22 of the Federal Trademark Act of 1946, as amended.

5. Opposer's registrations for two of its Moose Design Marks (Reg. No. 3,065,016 and Reg. No. 3,212,644) are incontestable under 15 U.S.C. §1065, and as such, these registrations are conclusive evidence of the validity of the registered marks, of Opposer's ownership of the marks and of the Opposer's exclusive right to use the mark with the goods and services.

6. Since at least as early as 2002, Opposer and its predecessors in interest have used the Moose Design Marks on clothing. Opposer and its predecessors in interest have also sold goods under the Moose Design Marks in related classes and offered retail store services under the Moose Design Marks.

7. Opposer's use of its Moose Design Marks has been valid and continuous since at least as early as each respective date of first use and has not been abandoned.

8. Opposer's total sales revenue for the Abercrombie brand is in the multi-billions. Opposer has prominently and extensively used, promoted and advertised its Moose Design Marks for products and services through varied promotional and advertising media.

9. Opposer's Abercrombie branded goods, including but not limited to clothing, headwear and accessories, are sold in its "Abercrombie & Fitch" and "abercrombie" stores, as well as through its website www.abercrombie.com and www.abercrombiekids.com.

10. As a result of Opposer's long and continuous use since at least as early as 2002, and its substantial investment in advertising and promotion, Opposer's Moose Design Marks have become famous and well-known among its actual and target purchasers of casual apparel as well as other members of the public, as a distinctive symbol of Opposer's goodwill.

11. Opposer's Moose Design Marks became extremely well-known prior to any use by Applicant of its mark and application for registration thereof.

12. Applicant is the owner of US Application No. 86/152,857, which was filed on December 26, 2013 under Section 1(b) of the Trademark Act, for the mark RED DEAR (& Design) covering "caps; hats; hooded sweatshirts; jackets; long-sleeved shirts; socks; sweatshirts; t-shirts; underwear" in International Class 25 (the "RD Mark").

13. Applicant's use of the RD Mark will inevitably capitalize upon the fame and distinctiveness of Opposer's Moose Design Marks which have acquired renown in connection with, among other things, clothing, headwear and related goods and services.

14. Applicant's mark so resembles Opposer's Moose Design Marks previously used by Opposer as to cause mistake, or to deceive, or to cause confusion as to source, sponsorship or affiliation.

15. Applicant's use of the RD Mark is likely to dilute Opposer's Moose Design Marks.

16. Registration of Applicant's mark will lessen the capacity of Opposer's famous name and mark to identify and distinguish its goods and services.

17. WHEREFORE, for the foregoing reasons, Opposer respectfully requests that the present Opposition be sustained and the registration of Application No. 86/152,857 be refused.

October 8, 2014

Respectfully submitted,

Abercrombie & Fitch Trading Co.

By: 

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Columbus, Ohio 43054
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lindsay_capps@abercrombie.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on the correspondent of record by mailing said copy on October 8, 2014 via first class mail, postage prepaid to:

Isabella Elisabeth Schnittger
101 Saybrook Rd
Simpsonville, South Carolina 29681

s/Lindsay Yeakel Capps/
Attorney for Opposer